

STATE OF MICHIGAN
COURT OF APPEALS

KRISTEN ELIZABETH NOLAN, a minor, and
VICKY BRANDT, as Next Friend, and
individually,

UNPUBLISHED
September 17, 1996

Plaintiffs-Appellants,

v

No. 171324
L.C.No. 93-15104-DP

TERRY NOLAN,

Defendant-Appellee.

Before: Gribbs, P.J., and Marilyn Kelly and White, JJ.

PER CURIAM.

Plaintiffs appeal by right from the circuit court order granting defendant's motion for summary disposition in this paternity action. Plaintiff Kristen Elizabeth Nolan is a minor child, and plaintiff Vicky Brandt is her mother. Plaintiffs allege that defendant is the child's father. The parties had previously entered into a 1982 settlement agreement which required defendant to pay a lump sum of \$5,000.00. Defendant did not admit to paternity. The child's mother had remarried at the time of the settlement, and the agreement contained the indication that her husband desired to adopt the child and undertake the obligation of supporting her. The adoption never took place. Plaintiffs subsequently filed this action to determine paternity and seek an order of support. The trial court found that plaintiffs' action was barred by the earlier settlement. We reverse.

Plaintiffs argue that MCL 722.713; MSA 25.493, which bars modification of settlement agreements concerning illegitimate children, is violative of the equal protection clause of the Constitution. Although this issue was not raised below, this Court may grant review because the issue presents a question of law and all facts necessary for its resolution have been presented. *Beeler v Michigan Racing Comm'r*, 191 Mich App 498, 500; 478 NW2d 700 (1991). A panel of this Court recently determined that the modification provision of the Paternity Act is unconstitutional to the extent that it

treats settlement agreements under the Act differently than orders of child support in divorce actions. *Dones v Thomas*, 210 Mich App 674; 534 NW2d 221 (1995), lv applied for. We are bound by that determination, Administrative Order 1994-4, and find that reversal is required on this basis.

Moreover, the trial court which approved the 1983 agreement failed to determine whether defendant's \$5,000.00 settlement, and Mr. Brandt's purported desire to adopt the child, provided adequate provision for the child's support and education. MCL 722.713; MSA 25.493. Lacking such a determination, even if the statute were constitutional, modification of the settlement agreement would not be precluded.

Reversed.

/s/ Roman S. Gibbs

/s/ Marilyn Kelly

/s/ Helene N. White